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No. 80-182

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

ANTHONY J. CELEBREZZE, JR.,
IN HIS OFFICIAL CAPACITY AS SECRETARY OF STATE FOR
THE STATE OF OHIO, *Petitioner,*

v.

JOHN B. ANDERSON, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF THE STATE OF NEW MEXICO AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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The State of New Mexico, as amicus curiae, respectfully urges that a writ of certiorari issue to review the judgment of the United States District Court for the Southern District of Ohio, Eastern Division, which was entered in the above captioned case on July 18, 1980 and which has been appealed to the Court of Appeals for the Sixth Circuit.

QUESTIONS PRESENTED

1. Whether the ballot access decisions of this Court require that the constitutionality of a state's filing deadline for independent presidential candidates be gauged in light of the past experience of reasonably diligent independent candidates and the political realities of presidential campaigns, and only after a factual determination of the alleged severity of the deadline.

2. Whether Ohio's March filing deadline for independent presidential candidates, which actual experience has shown not to deter reasonably diligent independent candidates from obtaining a place on the state's general election ballot, can be constitutionally justified as preserving political stability by denying ballot access by defeated and disaffected party candidates.

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INTERESTS OF AMICUS CURIAE

The interests of the amicus curiae, the State of New Mexico, and its reasons for urging this court to review the decision in *Anderson v. Celebrezze,* ____ F.Supp. ____, No. C-2-80-400 (S.D. Ohio, July 18, 1980), appeal docketed, No. ____, U.S. Court of Appeals for the Sixth Circuit, July 30, 1980, are as follows:

Like Petitioner, the State of Ohio, New Mexico has a statutory deadline for independent candidates which was challenged by Respondent John B. Anderson in *Anderson v. Hooper,* ____ F.Supp. ____, No. 80-432-M Civ. (D.N.M., July 8, 1980 and August 12, 1980), as being an infringement of his constitutional rights of political association and on the rights of others to cast their vote for him for president of the United States. Section 1-8-52 NMSA 1978 established the challenged deadline and provides in pertinent part that

> Declarations of independent candidacy and nominating petitions shall be filed with the proper filing officer during the period commencing at 9:00 a.m. on the first Tuesday of March of each even-numbered year and ending at 5:00 p.m. on that same day. . .

On July 8, 1980, the United States District Court for the District of New Mexico entered an order enjoining the New Mexico Secretary of State from enforcing the March 4, 1980, independent candidate filing deadline against Anderson. In its Memorandum Order and Opinion, the District Court held that Section 1-8-52 NMSA 1978 was unconstitutional "on its face." On August 12, 1980, on cross motions for summary judgment, the District Court issued a Memorandum Opinion and Order making the preliminary injunction permanent and stating that Section

1-8-52 "impermissibly burdens fundamental rights" and "invidiously discriminates against independent presidential candidates."

Although it has been determined that the particular and immediate interests of New Mexico were such that the decisions of the District Court would not be appealed by the Secretary of State and consequently that Anderson's name will be placed on the 1980 New Mexico general election ballot, New Mexico is nevertheless vitally affected by the questions raised in *Celebrezze v. Anderson*. The constitutionality of a March filing deadline for independent candidates remains a matter which will have to be considered by the New Mexico legislature in the upcoming 1981 legislative session. The outcome of this case is critical to that consideration.

SUMMARY OF ARGUMENT

The district court decisions in Ohio, Maryland, Maine and New Mexico with respect to the constitutionality of early filing deadline statutes are contrary to this Court's ruling in *Mandel v. Bradley,* 432 U.S. 173 (1977).

ARGUMENT

REVIEW IS NECESSARY TO PREVENT LOWER FEDERAL COURTS FROM MISAPPLYING THIS COURT'S DECISIONS ON THE CONSTITUTIONALITY OF BALLOT ACCESS RESTRICTIONS AND CANDIDATE FILING DEADLINES AND FROM UNNECESSARILY AFFECTING STATE LAWS GOVERNING FILING DEADLINES.

In *Mandel v. Bradley,* 432 U.S. 173 (1977), this Court rejected a lower court's assumption that a March filing deadline for independent candidates was *per se* illegal. The

lower court in *Bradley,* without undertaking an independent examination of the merits, held that the deadline served no compelling interest. This Court reversed the lower court's decision and required that it make a factual determination of the burdens such a deadline would impose on a "reasonably diligent independent candidate" before it ruled on the constitutionality of the statute.

In spite of the clear direction given by this Court to the district courts for the consideration of filing deadline statutes, the District Court for the District of New Mexico did not even cite *Mandel v. Bradley* in either of the opinions issued in *Anderson v. Hooper.* Contrary to *Mandel v. Bradley,* the District Court held that the New Mexico filing deadline could not be justified by a compelling state interest without making any finding that Anderson would in fact have had difficulty in meeting that deadline.

What gives rise to the several filing deadline cases brought by Respondent Anderson is not that the various statutory deadlines are too early, but rather that Respondent Anderson decided too late to run as an independent. That there is nothing inherently burdensome in an early filing deadline was plainly recognized by this Court in *Mandel v. Bradley.* That the district courts have failed to follow the rule set out by this Court for determining the constitutionality of filing deadline statutes requires the immediate consideration of the questions presented by Ohio in *Celebrezze v. Anderson.*

CONCLUSION

For all of these reasons, the State of New Mexico urges this Court to grant Ohio's petition for certiorari and advance the case for prompt argument and decision before the 1980 general election.

Respectfully submitted,

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